



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. 9-1238
Re: Payment from the State to a
sheriff for conveying a prisoner
to an examining trial
in another county.

We acknowledge receipt of your letter of August 5, 1939, in which you request the opinion of this department on the question of whether or not the sheriff of Childress County is authorized to receive payment from the state for conveying a prisoner to El Paso and return. In this connection we quote the following portion of your letter:

"The Sheriff of Childress County conveyed a prisoner from his jail to testify in an examining trial in a felony case, at El Paso, Texas, his prisoner being a material witness for such examining trial in El Paso. After the examining trial the Sheriff of Childress County returned the prisoner to jail in Childress.

"The prisoner was conveyed from Childress County to El Paso County by virtue of a subpoena issued out of El Paso County.

"Is the Sheriff of Childress County authorized to receive payment from the state for conveying this prisoner, under the above circumstances, to El Paso and return? If so, is this department authorized to issue warrant against the appropriation made within the judiciary of this department for the

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payment of Sheriffs for conveying prisoners?"

§ 2 of Article 1020 of the Code of Criminal Procedure of Texas, reads as follows:

"Sheriffs and constables serving process and attending any examining court in the examination of any felony case, shall be entitled to such fees as are fixed by law for similar services in misdemeanor cases in county court to be paid by the state, not to exceed Four and No/100 (\$4.00) Dollars in any one case and mileage actually and necessarily traveled in going to the place of arrest and for conveying the prisoner or prisoners to jail as provided in Articles 1029 and 1030, Code of Criminal Procedure, as the facts may be, but no mileage whatever shall be paid for summoning or attaching witnesses in the county where case is pending. Provided no sheriff or constable shall receive from the state any additional mileage for any subsequent arrest of a defendant in the same case, or in any other case in an examining court or in any district court based upon the same charge or upon the same criminal act, or growing out of the same criminal transaction, whether the arrest is made with or without a warrant, or before or after indictment, and in no event shall he be allowed to duplicate his fees for mileage for making arrests, with or without warrant, or when two or more warrants or arrest or capiases are served or could have been served on the same defendant on any one day."

You will note that the provisions of Article 1020, above quoted, fix the amount of the fee and mileage expense to which the sheriff is entitled upon performance of duties imposed upon him by law and referred to by Article 1020. From the statement of facts set out in your letter, however, it does not appear that there was any duty on the part of the

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sheriff to convey the prisoner to the examining trial in El Paso. No attachment was issued for the witness, and it therefore appears that the sheriff was without authority to attend the examining trial in El Paso or to convey the prisoner thereto.

It is the opinion of this department that the sheriff of Childress County is not entitled to receive payment from the state according to the provisions of Article 1020, above quoted, and that there is no duty on the Comptroller to issue the warrant payable to the sheriff of Childress County.

Yours very truly

ATTORNEY GENERAL OF TEXAS

BY

Ross Carlton,
Assistant

RECEIVED AUG 22, 1939

FIRST ASSISTANT
ATTORNEY GENERAL

